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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SARAH ELIZABETH ALEXANDER, an
individual; ROBERT ROY ALEXANDER,
an individual,

Plaintiffs,

vs.

COSTCO WHOLESALE CORPORATION
dba Costco, a Foreign Corporation; VALLEY
CONTAX INC., DOES I-X; and ROE
BUSINESS ENTITIES XI-XX, inclusive,

Defendants.

Case No.: 2:21-cv-00509-APG-VCF

**STIPULATION AND ORDER TO
EXTEND DISCOVERY PLAN AND
SCHEDULING ORDER**

(FIFTH REQUEST)

Defendants Valley Contax, Inc., by and through their counsel of record Alan W. Westbrook, Esq. of Perry & Westbrook, A Professional Law Firm, and Plaintiffs Sarah Elizabeth Alexander (referred to herein as “Mrs. Alexander”) and Robert Roy Alexander (referred to herein as “Mr. Alexander”), by and through counsel, Bradley Mainor, Esq. and Ash Marie Blackburn,

1 Esq. of the Mainor Wirth law firm, and Defendants, Costco Wholesale Corporation (hereinafter
2 referred to as “Costco”), by through counsel, Edgar Carranza, Esq. of the law firm Messner
3 Reeves LLP, hereby submit the instant stipulation and order to extend the Discovery Plan and
4 Scheduling Order (Fifth Request) pursuant to Local Rule II 26-4 as follows:

5 **I. GOOD CAUSE SUPPORTING THE EXTENSION.**

6 The parties come to this Court seeking a fifth extension of the Discovery Plan and
7 Scheduling Order governing this complicated product liability/personal injury case. The parties
8 have diligently moved this case forward but additional discovery remains to be completed which
9 warrants the requested extension.
10

11 **A. SUMMARY OF EFFORTS THUS FAR.**

12 As this Court is well aware, this lawsuit involves allegations that Plaintiff, Sarah Elizabeth
13 Alexander (referred to herein as “Mrs. Alexander”) suffered serious injuries to her eye after
14 wearing prescription contact lenses, which were distributed by Valley Contax and purchased from
15 Costco, as the result of an unspecified defect with the lenses.

16 On October 28, 2021, Plaintiffs filed their Complaint against Costco and Valley Contax
17 with the Eighth Judicial District Court for Clark County, Nevada. On February 17, 2021, Costco
18 filed its Answer denying Plaintiffs’ allegations and denying all liability for the injuries. On
19 February 18, 2021, Valley Contax filed its Answer denying Plaintiffs’ allegations and denying all
20 liability for the injuries claim.

21 On March 9, 2021, Plaintiffs filed their Request for Exemption from Arbitration in which
22 they outlined their claimed injuries and alleged damages. On March 29, 2021, Costco filed its
23 Notice of Removal and removed the matter to this Court based on diversity jurisdiction. On April
24 13, 2021, Costco filed its Statement Regarding Removal. The parties participated in the Fed. R.
25 Civ. P. 26(f) conference on April 14, 2021, and filed their proposed Joint Discovery Plan and
26 Scheduling Order which was entered by this Court on April 28, 2021.
27

1 On April 28, 2021, Plaintiff served their Initial Disclosure of Witness and Production of
2 Documents Pursuant to FRCP 26(a)(1). On May 10, 2021, Defendant Costco served their Initial
3 Disclosure of Witness and Production of Documents Pursuant to FRCP 26(a)(1). On June 10,
4 2021, Defendant Valley Contax served their Initial Disclosure of Witness and Production of
5 Documents Pursuant to FRCP 26(a)(1). Parties have exchanged their respective Fed. R. Civ. P.
6 26 Disclosures. In the interim, the parties have been engaged in discovery. The parties served a
7 first set of written discovery requests to each other, some of which have been responded to. At
8 the same time, Plaintiffs' medical records are being secured independently directly from the
9 health care providers. As they are being produced, supplemental disclosures are being served to
10 provide the records to all parties.
11

12 Plaintiffs deposed Karen Crawford (Optical Manager) on January 19, 2022, Aaron
13 Whitaker (Optician at Costco) on January 25, 2022, Max Ramos (General Manager at Costco) on
14 June 9, 2022, Edgar Retana (Security Assurance Manager of Dynatec Laboratories) on July 12,
15 2022, Robert Ahern (FRCP 30(b)(6) witness for Valley Contax) on October 17, 2022, Leisha
16 Crawford (FRCP 30(b)(6) witness for Costco) on December 6, 2022, and Ellie Cleveland (Former
17 Employee of Costco) on March 15, 2023.

18 Mrs. Alexander's deposition went forward on July 1, 2022. Mr. Alexander's deposition
19 was also set to take place on July 1, 2022, but had to be continued due to the length of Mrs.
20 Alexander's deposition. Mr. Alexander's deposition took place on December 14, 2022.

21 An inspection of the right contact lens at issue in the matter was conducted on September
22 26, 2022, near San Francisco, California. Plaintiff's counsel personally delivered the subject
23 contact lens to the laboratory. Following the inspection, Plaintiff's expert took issue with the
24 method of testing versus the agreed upon protocol. Plaintiff has actively been working to schedule
25 the deposition of the laboratory technician, Afaf Wensky, which has been set for May 2nd, 2023.
26 Ms. Wensky's deposition is important to obtain before the expert reports are due given the claims
27 of product defect.
28

1 Plaintiff's treating physician and retained expert, Dr. Eric Brooker, was also deposed on
2 September 28, 2022. During the deposition, Defense counsel identified additional medical records
3 that had not been disclosed and requested that Dr. Brooker's deposition be continued.
4 Unfortunately, due to several personal issues in Dr. Brooker's life, all parties had difficulty
5 obtaining the additional records from his office. His deposition was finally able to go forward on
6 February 23, 2023.

7
8 Plaintiff is still treating as a result of the injuries alleged in this case so that opinions
9 regarding her future medical treatment is still in flux. Additional treatment has been recommended
10 within the last few weeks by virtue of Plaintiff's ongoing care by Dr. Brooker. Plaintiff is in the
11 process of obtaining and disclosing the records as quickly as possible.

12 Lastly, the parties have agreed to submit this matter to a private mediation with Judge
13 Jennifer Togliatti (Ret.) on July 20, 2023.

14 **B. GOOD CAUSE.**

15 As indicated above, the parties have and continue to diligently depose the witnesses
16 involved in this case. They actively worked together to schedule an out-of-state inspection, have
17 hired experts, and are gathering evidence to disclose their reports.

18 Moreover, this is a significant personal injury matter that has and will continue to require
19 significant effort by both parties. Plaintiff has already identified significant past medical expenses,
20 unknown future medical expenses estimated to amount to \$100,000, loss of enjoyment of life in
21 the amount of \$1,000,000, past pain and suffering in the amount of \$1,500,000 and future pain
22 and suffering in the amount of \$2,500,000, to name some of the damage components identified
23 thus far. Significant effort will be required to address each of the damage components, and the
24 liability portion of this case.

25 The parties have agreed to submit this matter for private mediation with Judge Jennifer
26 Togliatti (Ret.) on July 20, 2023, further warranting an extension of the discovery deadlines.
27

II. DISCOVERY COMPLETED TO DATE.

In accordance with LR II 26-4(a), the Parties provide the following statement of discovery completed to date:

A. Plaintiff's Discovery.

1. Plaintiffs' FRCP 26 initial disclosures served 04-20-21.
2. Plaintiffs' First Supplement to FRCP 26 initial disclosures served on 07-20-21.
3. Plaintiff, Sarah Alexander's Answers to Costco's First Set of Interrogatories served on 07-23-21.
4. Plaintiff, Sarah Alexander's Responses to Costco's Request for Production served on 07-23-21.
5. Plaintiff, Robert Roy Alexander's Answers to Costco's First Set of Interrogatories served on 07-23-21.
6. Plaintiff, Robert Roy Alexander's Responses to Costco's Request for Production served on 07-23-21.
7. Plaintiffs' Second Supplement to FRCP 26 initial disclosures served on 08-25-21.
8. Plaintiffs' Third Supplement to FRCP 26 initial disclosures served on 09-02-21.
9. Plaintiffs' First Set of Requests for Production to Valley Contax served on 11-15-21.
10. Plaintiff's First Set of Interrogatories to Defendant Valley Contax, served on 11-16-21.
11. Plaintiffs' Fourth Supplement to FRCP 26 initial disclosures served on 11-22-21.
12. Plaintiffs' First Set of Interrogatories to Costco served on 11-23-21.

- 1 13. Plaintiff's Fifth Supplement to FRCP 26 initial disclosures served
- 2 on 12-10-21.
- 3 14. Plaintiff noticed the deposition of Aaron Whitaker on 12-14-21.
- 4 15. Plaintiff noticed the deposition of Karen Crawford on 12-14-21.
- 5 16. Plaintiff Answers to Defendant Valley Contax's First Set of Interrogatories
- 6 served on 2-18-22.
- 7 17. Plaintiff Responses to Defendant Valley Contax's First Set of Production of
- 8 Documents served on 2-18-22.
- 9 18. Plaintiff Responses to Defendant Valley Contax's First Set of Request for
- 10 Admissions served on 2-18-22.
- 11 19. Plaintiff noticed the deposition of Max Ramos on 4-11-22.
- 12 20. Plaintiffs' Sixth Supplement to FRCP 26 initial disclosures served
- 13 on 5-23-22.
- 14 21. Plaintiff noticed the deposition of Robert Ahern on 6-8-22.
- 15 22. Plaintiff noticed the deposition of Edgar Retana on 6-9-22.
- 16 23. Plaintiff amended the noticed deposition of Robert Ahern on 6-17-22.
- 17 24. Plaintiff amended the noticed deposition of Edgar Retana on 6-20-22.
- 18 25. Plaintiff vacated the noticed deposition of Robert Ahern on 6-22-22.
- 19 26. Plaintiffs' Seventh Supplement to FRCP 26 initial disclosures served
- 20 on 6-22-22.
- 21 27. Plaintiffs' Eighth Supplement to FRCP 26 initial disclosures served
- 22 on 6-30-22.
- 23 28. Plaintiff's First Set of Requests for Production of Documents to Defendant
- 24 Costco served on 7-7-22.
- 25 29. Plaintiffs' Ninth Supplement to FRCP 26 initial disclosures served
- 26 on 8-18-22.
- 27
- 28

1 30. Plaintiffs' Tenth Supplement to FRCP 26 initial disclosures served
2 on 9-9-22.

3 31. Plaintiffs' counsel traveled to Pleasanton, CA on September 26, 2022 to deliver
4 the right contact lens at issue in this matter to Defendants' expert for inspection.

5 32. Plaintiffs noticed the deposition of Robert Ahern, Valley Contax' FRCP
6 30(b)(6) witness on October 14, 2022.

7 33. Plaintiffs noticed the deposition of Costco's FRCP 30(b)(6) witness on
8 November 1, 2022.

9 34. Plaintiffs noticed the deposition of Afaf Wensky on March 23, 2023.

10
11 B. Costco's Discovery.

12 1. Costco's FRCP 26 initial disclosures served 05-10-21.

13 2. Costco's First Set of Interrogatories to Plaintiff, Robert Roy Alexander
14 served 05-12-21.

15 3. Costco's First Set of Requests for Production to Plaintiff, Robert Roy
16 Alexander served 05-12-21.

17 4. Costco's First Set of Interrogatories to Plaintiff, Sarah Alexander
18 served 05-12-21.

19 5. Costco's First Set of Requests for Production to Plaintiff, Sarah Alexander
20 served 05-12-21.

21 6. Custodian of records depositions were set for various health care providers
22 on 08-17-21.

23 7. Costco's First Supplement to FRCP 26 disclosures served on 10-04-21.

24 8. Costco's Answers to First Set of Interrogatories from Plaintiff, served
25 on 1-14-22.

26 9. Costco's Responses to First Set of Requests for Production of Documents
27 served on 9-16-2022.

1 10. Costco's Second Supplement to FRCP 26 disclosures served on 11-2-2022.

2 C. Valley Contax's Discovery.

3 1. Valley Contax's FRCP 26 initial disclosures served on June 9, 2021.

4 2. Valley Contax's First Set of Interrogatories to Plaintiff, Sarah Alexander
5 on 12-30-21.

6 3. Valley Contax's Request for Production of Documents to Plaintiff, Sarah
7 Alexander on 12-30-21.

8 4. Valley Contax's Request for Admissions to Plaintiff, Sarah Alexander
9 on 12-30-21.

10 5. Valley Contax's First Supplement to FRCP 26 initial disclosures served
11 on 1-28-22.

12 6. Valley Contax's Answers to Plaintiff Sarah Alexander's First Set of
13 Interrogatories, served on 1-31-22.

14 7. Valley Contax's Responses to Plaintiff Sarah Alexander's First Set of Request
15 for Production of Documents, served on 1-31-22.

16 8. Valley Contax Second Supplement to FRCP 26 initial disclosures served
17 on 2-11-22.

18 9. Valley Contax's Third Supplement to FRCP 26 initial disclosures served
19 on 5-19-22.

20 10. Valley Contax noticed the deposition of Mr. Alexander on 6-16-22.

21 11. Valley Contax noticed the deposition of Mrs. Alexander on 6-16-22.

22 12. Valley Contax's Fourth Supplement to FRCP 26 initial disclosures served
23 on 6-29-22.

24 13. Valley Contax's Fifth Supplement to FRCP 26 initial disclosures served
25 on 7-22-22.

26 14. Valley Contax noticed the deposition of Dr. Eric Brooker on 7-29-22.

1 15. Valley Contax noticed the deposition of Dr. Eric Brooker again on September
2 7, 13, 14, and 23, 2022. The deposition ultimately went forward on September
3 28, 2022.

4 16. Valley Contax's Sixth Supplement to FRCP 26 initial disclosures served
5 on 10-3-22.

6 17. Valley Contax's Supplemental Responses to Plaintiff's 1st and 2nd Requests for
7 Production on 10-3-2022.

8 18. Valley Contax noticed the deposition of Robert Alexander on October 27, 2022
9 to take place on December 17, 2022.

10 19. Valley Contax's Seventh Supplement to FRCP 26 initial disclosures served
11 on 10-28-22.

12 20. Valley Contax noticed the continued deposition of Dr. Eric Brooker on
13 September 30, 2022, but vacated the deposition on November 2, 2022, due to
14 the noticing counsel suffering from COVID.

15 21. Valley Contax's Eighth Supplement to FRCP 26 initial disclosures served
16 on 11-29-22.

17 22. Valley Contax's Ninth Supplement to FRCP 26 initial disclosures served
18 on 11-30-22.

19 23. Deposition of Robert Alexander went forward 12-14-2022.

20 24. Valley Contax's Tenth Supplement to FRCP 26 initial disclosures served
21 on 1-20-2023.

22 25. Deposition of Dr. Brooker went forward 2-23-2023.

23
24 **III. DISCOVERY REMAINING TO BE COMPLETED.**

25 In accordance with LR II 26-4(b), the Parties provide the following statement of discovery
26 remaining to be completed:

- 27 1. Depositions of Plaintiff's treating providers;

2. Deposition of Afaf Wensky;
3. Initial expert designations;
4. Rebuttal expert designations;
5. Depositions of Initial and Rebuttal Experts;
6. Mediation on July 20, 2023.

IV. WHY REMAINING DISCOVERY HAS NOT BEEN COMPLETED.

This is a complicated and complex product defect case. Once the parties embarked on discovery, they have been able to move this matter forward with the appropriate diligence. As detailed above, significant discovery has been completed including the exchange of initial disclosures, completion of multiple waves of written discovery, fact and party depositions, securing independent copies of Plaintiffs' medical records, and an out-of-state inspection.

All counsels have trials taking place in the spring of 2023 but have nonetheless agreed to submit this matter for private mediation in July 20, 2023. Plaintiffs' counsel has specifically been scheduled to start trial with Judge Mahan on April 10, 2023.

If mediation is not successful, the parties' need time to schedule the depositions of Plaintiff's treating physicians and the designated experts.

V. PROPOSED SCHEDULE FOR COMPLETING DISCOVERY.

This request for an extension of time is not sought for any improper purpose or other purpose of delay. The parties respectfully submit that this constitutes good cause for the extension.

The following is a list of the current discovery deadlines and the parties' proposed extended deadlines.

<u>Scheduled Event</u>	<u>Current Deadline</u>	<u>Proposed Deadline</u>
Discovery Cut Off	July 4, 2023	September 1, 2023
Amend Pleadings/Add Parties	April 4, 2023	June 2, 2023
Initial Expert Disclosures	April 4, 2023	June 2, 2023
Rebuttal Expert Disclosures	June 6, 2023	August 4, 2023
Dispositive Motions	August 1, 2023	September 29, 2023
Joint Pre-Trial Order	September 1, 2023	October 31, 2023

///

If dispositive motions are filed, the deadline for filing the joint pretrial order will be suspended until 30 days after decision on the dispositive motions or further court order.

1 This is the fifth request for extension of time in this matter and no trial date will be
2 impacted by the extension as no such trial date has been set.

3 The parties submit that the reasons set forth above constitute good cause for the requested
4 extension.

5
6 Dated this 3rd day of April, 2023.
PERRY & WESTBROOK

7
8 /s/ Alan W. Westbrook
9 ALAN W. WESTBROOK, ESQ.
10 Nevada Bar No. 6167
11 11500 S. Eastern Avenue, Ste. 140
12 Henderson, NV 89052
13 *Attorney for Defendant Valley Contax Inc.*

Dated this 3rd day of April, 2023.
MAINOR WIRTH, LLP

/s/ Ash Marie Blackburn
ASH MARIE BLACKBURN, ESQ.
Nevada Bar No. 14712
6018 S. Fort Apache Road, Ste. 150
Las Vegas, NV 89148
*Attorney for Plaintiffs, Sarah Elizabeth Alexander
and Robert Roy Alexander*

13 Dated this 3rd day of April, 2023.
14 **MESSNER REEVES, LLP**

15 /s/ Edgar Carranza
16 EDGAR CARRANZA, ESQ.
17 Nevada Bar No. 5902
18 8945 W. Russell Road, Suite 300
19 Las Vegas, NV 89148
20 *Attorney for Defendants, Costco Wholesale*

21 **IT IS SO ORDERED.**

22 DATED this 4th April, 2023.



UNITED STATES MAGISTRATE JUDGE

From: Edgar Carranza <ECarranza@messner.com>
Sent: Friday, March 31, 2023 2:27 PM
To: Ashlee Clark; Alan W. Westbrook; jmeacham@perrywestbrook.com; Patti Sherretts; Scott Lee
Cc: Natalie Cothran; Nailah Cain; Alysse Beasley; Ash Blackburn
Subject: RE: Alexander v. Costco_Mediation Dates

Thank you. You have my authority to include my e-signature.

EDGAR CARRANZA

Partner

Messner Reeves LLP

O: 702.363.5100 E: ecarranza@messner.com

8945 W. Russell Road, Suite 300, Las Vegas, NV 89148

From: Ashlee Clark <aclark@mwinjury.com>
Sent: Friday, March 31, 2023 11:40 AM
To: Edgar Carranza <ECarranza@messner.com>; Alan W. Westbrook <awestbrook@perrywestbrook.com>; jmeacham@perrywestbrook.com; Patti Sherretts <PSherretts@messner.com>; Scott Lee <slee@perrywestbrook.com>
Cc: Natalie Cothran <Natalie@mwinjury.com>; Nailah Cain <ncain@mwinjury.com>; Alysse Beasley <Alysse@mwinjury.com>; Ash Blackburn <Ash@mwinjury.com>
Subject: RE: Alexander v. Costco_Mediation Dates

[EXTERNAL EMAIL]

Hello All,

All revisions have been made. Please review the attached, and confirm if I have permission to e-sign on your behalf.

Warm Regards,

Ashlee Clark

Ashlee Clark, Paralegal

MAINOR WIRTH, LLP

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Subject: Re: Alexander v. Costco_Mediation Dates

You have my approval as well.

Alan

On 3/31/2023 2:26 PM, Edgar Carranza wrote:

Thank you. You have my authority to include my e-signature.

EDGAR CARRANZA

Partner

Messner Reeves LLP

O: 702.363.5100 E: ecarranza@messner.com

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Cc: Natalie Cothran <Natalie@mwinjury.com>; Nailah Cain <ncain@mwinjury.com>; Alysse Beasley <Alysse@mwinjury.com>; Ash Blackburn <Ash@mwinjury.com>
Subject: RE: Alexander v. Costco_Mediation Dates

[EXTERNAL EMAIL]

Hello All,

All revisions have been made. Please review the attached, and confirm if I have permission to e-sign on your behalf.

Warm Regards,

Ashlee Clark

Ashlee Clark, Paralegal

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